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THE ROLE OF THE ARMY NATIONAL GUARD IN  
DRUG INTERDICTION

BY

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USAWC MILITARY STUDIES PROGRAM PAPER

THE ROLE OF THE ARMY NATIONAL GUARD IN DRUG INTERDICTION  
AN INDIVIDUAL STUDY PROJECT

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# ABSTRACT

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# THE ROLE OF THE ARMY NATIONAL GUARD IN DRUG INTERDICTION

## CHAPTER 1

### INTRODUCTION

In the last two years political pressure to expand the United States military involvement in stopping the flow of illegal drugs into the United States has continued to increase. National Guard participation in counternarcotics operations has increased significantly during this same period. This paper will discuss and analyze the role of the National Guard in this new mission; whether the senior leadership of the National Guard is fully supportive of this role and the legal aspects under Posse Comitatus; and what contributions have been made by the National Guard to the drug interdiction and eradication programs.

Drug abuse in this country is persistent and growing, and has escalated to the point that it is out of control. The retail value of illegal drugs consumed by drug abusers in the United States in 1989 is estimated to be over \$100 billion. Federal, State, and local government law enforcement agencies have been unable to cope with the increased responsibilities of policing the trafficking, distribution, and use of illegal drugs. The cost required to support the drug education of our children, treatment for drug offenders, and additional personnel for law enforcement is expensive. These costs are rapidly approaching \$10 billion (Appendix A) and could conceivably exceed \$10 billion

by Fiscal Year 1992.<sup>1</sup> Trained manpower is woefully inadequate in law enforcement support, education, and treatment. Additionally, overcrowding of our prison systems has created a tremendous financial burden on federal, state and local governments.

A variety of sources and methods are involved in supplying and smuggling drugs. Several South American countries, Caribbean, and Asian countries, as well as Mexico and the United States are principle sources for one or more illegal drugs. Smuggling is generally accomplished through ports-of-entry, through concealment in merchandise or on travelers. Additionally, private aircraft and vessels traveling surreptitiously are used to smuggle large quantities of illegal drugs.

Congress has authorized and appropriated substantial funding for drug interdiction activities. These appropriations include substantial funds for the National Guard. Federal funding for Fiscal Year 1990 provides the National Guard with many of the necessary resources, including manpower, to accomplish drug interdiction and other law enforcement activities, with minimal or no impact on current National Guard missions and responsibilities.

The Reagan and Bush Administration's have taken dramatic actions to stem the drug problem. These actions include efforts to focus concern on the escalating drug problems facing this nation and the costs associated with drug interdiction. Additionally, measures are being taken to



place more emphasis on education to curtail the demand for illegal drugs, provide treatment for drug abusers, and prosecute drug offenders.

#### ENDNOTES

1. White House, National Drug Control Strategy. (Washington: GPO, Sept 1989), 153.

## CHAPTER II

### PROBLEM

The Federal government has the responsibility to increase efforts to eradicate drug use and to interdict illegal drugs. This is not a simple tasking even with increased military manpower and the latest technological resources being implemented. Statistics reveal, that since 1981, the use of illegal drugs has escalated in the United States at a rate of 300% per year. Today (on a daily basis) it is estimated that:<sup>2</sup>

- 2,000 Americans will be arrested for drug related crimes;
- 5,000 Americans will try cocaine for the first time;
- 500,000 Americans are regular heroin users;
- 6,000,000 Americans are regular cocaine users;
- 23,000,000 Americans are regular marijuana users; and
- 38,000,000 Americans are using some illicit drug.

The American public is the frustrated over the fact that the problem continues to affect all segments of our society. In 1988, Americans felt that the elimination of illicit drug use was the single most important national security goal of the United States, and favored the use of military force to intercept illegal drugs from coming across our borders.<sup>3</sup>

The monetary expenses incurred by the American public to support the fight to combat illegal drugs is increasing at an alarming rate. With the passage of the Anti-drug Abuse Act

of 1986, President Reagan was able to provide funding for support of law enforcement and drug interdiction. The Federal interdiction efforts include inspection of international travelers and cargo by United States Custom Service Inspectors, air and marine interdiction efforts by Custom patrol officers, and interdiction by the United States Coast Guard. The Drug Enforcement Administration (DEA) supports interdiction through the provision of intelligence and by investigating and presenting interdiction cases to the United States Attorneys.<sup>4</sup>

The military personnel used in drug interdiction have been provided by the Coast Guard, the U.S. Navy, the U.S. Air Force and the National Guard. Their efforts are intended to stem the flow of illegal drugs entering the United States. The Navy and Coast Guard patrol the seas searching for ships and boats carrying contraband, the Air Force patrols the skies to report suspicious aircraft, and the National Guard provides equipment, training, and manpower to support law enforcement agencies. Expanding the military role in support of drug interdiction efforts has resulted in concern that a large force of trained personnel committed to performing the interdiction role, could possibly cause interference with their primary mission - preparing for war time missions.

Existing resources and requirements placed on law enforcement agencies, lacking manpower and equipment, diminishes their ability to sustain illegal drug operations. The added requirement of drug interdiction can only be

accomplished with additional resources. A readily available resources is the military, an asset possessing the immediate capability to affect surveillance and interdiction.

#### ENDNOTES

2. Herbert R. Temple, Jr., The Nation's War on Drugs, Vital Speeches of The Day, Vol. LV, No. 17, (June 15, 1989) 516-519.

3. U.S., General Accounting Office, Report to Congressional Requesters, Drug Control: Issues Surrounding Increased Use of the Military in Drug Interdiction, April 1988 (Washington: GPO, 1988), 20-22.

4. U.S., General Accounting Office, Federal Drug Interdiction Efforts Need Strong Central Oversight, [by Comptroller General of The United States] Washington: GPO, 1983) 73-78.

## CHAPTER III

### Anti-Drug Abuse Act

Former Speaker of the House, Jim Wright (D-TX), introduced a bill (H.R. 5484), which was designed to provide guidance and funding in the effort to combat drug abuse. He stated that the bill was:<sup>5</sup>

An Act to strengthen Federal efforts to encourage foreign cooperation in eradicating illicit drug crops and halting drug traffic, to improve enforcement of Federal drug laws and enhance interdiction of illicit drug shipments, to provide strong Federal leadership in establishing effective drug abuse prevention and education programs, to expand Federal support to drug abuse treatment and rehabilitation efforts, and for other purposes.

This bill became Public Law 99-570, Anti-drug Abuse Act of 1986, and provides legislative authority which supports the efforts to curtail illegal drug use. Under this Act penalties were incorporated for offenses in trafficking, manufacturing, distribution, and selling. In addition to stiff jail sentences provisions are made for major fines. However, these appear to be mainly a deterrent for the drug runner, as large-scale drug dealers often have resources to escape apprehension and penalties.

Although there are fifteen Titles to the Act, the participation of the National Guard and law enforcement agencies is covered in Titles I through IV:<sup>6</sup>

- a. Title I - Anti-Drug Enforcement
- b. Title II - International Narcotics Control Act
- c. Title III - National Drug Interdiction

d. Title IV - Demand Reduction

The remaining titles deal with aspects of eliminating illegal drugs outside of the military operational community.

There are many provisions in the law, however the one that focuses on the role of the National Guard states:<sup>7</sup>

Provides authorization for the use of the National Guard to assist law enforcement officials to halt entry of vessels and aircraft carrying drugs.

BUDGET

Drug Abuse Prevention and Control budget authority for fiscal years 1981 to 1990 increased significantly. Growing from \$800 million in 1981 to a little over \$10 billion in 1990 indicates the impact illegal drugs are having on Federal, State, and local law enforcement agencies.<sup>8</sup>

The best way to curtail the spiraling affect of the budget is to eliminate illegal drugs - although some say legalization of illegal drugs or government control can create the same affect. The proponents of legalization claim that there is no way to completely eliminate drug use. Legalization would generate another source of revenue, and reduce the funds that would be spent trying to control drug interdiction and eradication.

The Reagan Administration reported that resourcing for drug law enforcement tripled between 1981 and 1988, while funding for prevention and treatment increased by 52 percent. The Anti-drug Abuse Act of 1986 added substantial new federal

funds for demand reduction programs and contained a large portion of the treatment/prevention funding increases established by the Administration and Congress. However, authorizations were reduced for the procurement of equipment and additional manpower for law enforcement agencies. Administration officials tried to qualify the reasoning for reduction in certain drug support areas. There was an attitude that the "war on drugs" could be remedied quickly and budget requirements would decrease accordingly. Additionally, it was expected that State and local governments would absorb costs for local drug law enforcement programs. There was a heated discussion in Congress when the Administration reduced funding authorizations from the submitted budget outlay. The outlays in the programmed budget and the authorizations for drug enforcement had reflected consistency. It was widely felt that reductions would have an adverse impact on the anti-drug abuse program, especially if the military was included in the cuts.

The Bush Administration has made the drug issue its number one domestic priority, and is more supportive than the Reagan Administration toward the needs of State and local governments to cope with drugs. In September 1989, President Bush increased the budget authorization (consistent with section 1005 of the Anti-Drug Abuse Act of 1988) to over \$8 billion based on the recent escalation of illegal drug imports and the critical need for education and law enforcement support.

The President has stated that he fully supports Department of Defense actions to curtail the trafficking, distribution, and the use of illicit drugs. The use of the National Guard in drug interdiction along our borders provides a timely and necessary means for this role.

Many members of Congress recognize and appreciate the historical role the National Guard has had in support of state missions. It is strongly felt that the National Guard has the ability and many of the resources necessary to provide support to law enforcement agencies. The drug interdiction and eradication activities undertaken by the National Guard are good examples of the contribution the military can make. However, concern has been expressed by a number of members of Congress that the availability of federal funds may make the National Guard less aggressive in providing drug interdiction and law enforcement support during normal training periods (reduces the training time for conducting wartime mission requirements).<sup>9</sup> The National Guard is concerned that training for wartime requirements will be affected if it is required to provide continued support for drug interdiction, especially during the fifteen day annual training period.<sup>10</sup> This conflict has been resolved in part by requesting States to submit "matching" plans (Appendix B), under section 1105, Public Law 100-456, for drug interdiction and eradication requirements without interfering with scheduled annual training. The plans are submitted to National Guard Bureau and Department of Defense, outlining



the drug interdiction requirements the Governor and Adjutants General propose to support to law enforcement agencies and programs.

Approval of the plans by National Guard Bureau and Department of Defense is the authority to request authorization for funding support. The funding appropriation supports a force of volunteers, and therefore has minimal impact on a unit's ability to train for its wartime requirements. However, this could change if the National Guard is called upon to expand its support to law enforcement requirements.

#### ENDNOTES

5. U.S., Congressional Quarterly Almanac. 1986, (Washington: GPO, 1987),

6. Commerce Clearing House, U.S. Congressional Code and Administrative News. 100 Stat. 3207, Vol. 6, 1986 (Washington: GPO, 1987), 92.

7. Ibid.

8. CSR Report to Congress, Federal Drug Control: President's Budget Request For Fiscal Year 1988, [by Harry L. Hogan] (Washington: GPO, June 1, 1987), CRS-16.

9. Public Law 100-456, Title XI, 1989, 320.

10. Ibid.

CHAPTER IV  
Role of The National Guard

MISSION

Section 1105 of Public Law 100-456 (Omnibus Drug Law), establishes an "enhanced drug interdiction and enforcement role for the National Guard. This section provides funding for National Guard personnel used for the purpose of drug interdiction and enforcement operations." Section 412 of PL 100-456 specifies the number of National Guard personnel authorized to serve full-time Active Duty for Special Work (ADSW).<sup>14</sup> (ADSW is when a soldier or airman is paid by the federal government to participate in military training for the federal mission of the National Guard, but still under control of the State.)

Mr. Stephan M. Duncan, Assistant Secretary of Defense for Manpower and Reserve Affairs, on behalf of the Secretary of Defense, provided written authorization and appropriations to employ the National Guard in the "drug interdiction activities" program. This authority prescribes and enforces the training criteria for the National Guard and does not alleviate training for its wartime missions. The National Guard has an additional new peacetime mission to support law enforcement in the drug interdiction and eradication operations.

The National Guard assists federal, state, and local law

enforcement agencies in drug interdiction by providing the necessary manpower and equipment to support the federal drug abuse efforts. They provide commercial port of entry inspections/cargo inspections, sea port inspections, aerial reconnaissance of waterways, aviation support, tactical and fixed station radar (for low flying aircraft), border observation, clandestine airstrip observation, and equipment loan support to Federal law enforcement agencies.

### FUNDING

In Fiscal Year 1989 Defense Authorization Bill, Congress allocated the National Guard \$40 million dollars for drug interdiction operations.<sup>12</sup> States and territories were eligible for a portion of the available Federal funds. The Secretary of Defense provided funds to the governor of those States who submitted an approved plan which specified how the National Guard was to be used. The FY 90 budget allocates approximately \$70 million dollars to the National Guard to continue drug interdiction operations. Additionally, another \$40 million dollars was dedicated for procurement of special equipment necessary to ensure effective communications and surveillance operations. The National Guard participated in over 1,811 separate Drug Support Operations from January 1 through November 27, 1989 (Appendix C), resulting in extremely successful interdictions and confiscations.<sup>13</sup> These operations resulted in confiscation of large amounts of drugs, cash, and equipment in addition to eradication of

marijuana plants (Appendix D).<sup>14</sup>

Another benefit of the increased inspections was the uncovering of other illegal activities such as smuggling of high-technology components, and stolen jet engines. Although these operations are periodic, and unannounced ahead of time, to dissuade trafficking, mobilizing the forces required to support law enforcement agencies could create employee and employer problems. Employers have generally been supportive of their National Guard employees missing work on short notice due to their participation in drug support operations. However, individuals who mislead their employers by constantly volunteering for drug support operations could face termination.

### RESOURCES

The National Guard depends on equipment assigned to accomplish mobilization missions to accomplish the drug interdiction and eradication operations. Although some of the types of equipment being employed in the drug interdiction operations are relatively new, they are not in all cases the latest in technological advances. Recently, the Department of Defense has provided helicopters and radar sets to increase the efficiency of the National Guard in surveillance operations. Some of the important resources the National Guard is using in support to law enforcement operations are:<sup>15</sup>

- (1) Military Police
- (2) Reconnaissance Personnel
- (3) AH-60 and AH-64 Helicopters
- (4) C-130 Samson Aircraft
- (5) Land Radar Sets

The National Guard currently has the capability to support law enforcement agencies under existing plans with the equipment presently available. In some cases the resources necessary to ensure sustainment in carrying out the drug interdiction missions are slowly arriving into the National Guard. However, the high costs and availability of equipment precludes giving all the States the necessary resources to improve the capability of drug interdiction operations. This has hindered some mission requirements, especially in surveillance and intelligence gathering capability. In conducting these operations the National Guard has proven its capability to plan, coordinate, and accomplish support to law enforcement, especially on short notice.

The use of the National Guard in Anti-drug support was originally restricted to certain Military Occupational Specialties (MOS) related to law enforcement. These MOS' were in the infantry surveillance field (11B), military police (95B), and aviation pilots and crew chiefs. The use of only Military Police and Long Range Surveillance personnel limited the number of personnel the National Guard could employ with law enforcement agencies on a volunteer basis.

After several operations, many of the State Adjutants General agreed that many of the assignments could be accomplished by a wide variety of MOS', not just those originally identified.

All National Guard personnel selected for drug support duty are interviewed; briefed on their responsibilities; participate in the drug testing program; and receive the necessary training prior to deployment with law enforcement agencies. The employment of the National Guard in drug interdiction activities is always with a member of a law enforcement agency. The National Guard selection process ensures that only the highest qualified members of the National Guard are selected to participate in supporting law enforcement operations.

#### RESTRICTIONS

The *Posse Comitatus Act of 1878* and subsequent legislation provides guidance on employment of federal military forces (including the Reserve Components) participation in law enforcement activities. This law prohibits the use of military forces from police functions. However, the DOD Authorization Act of 1982, authorized DOD to provide military support to law enforcement under Sections 371 through 380, Title 10 of U.S.C. These sections generally allow members of the National Guard while in Title 32 status, but not in federal service, to be exempt from this act.<sup>16</sup>

Under the current drug enforcement guidelines, it is the policy of the National Guard Bureau that members of the National Guard not be used to enforce civil law, hold no arrest authority, or directly seize evidence. The agreements the National Guard established in supporting the law enforcement drug interdiction effort, ensures that there is a member of the law enforcement agency with a National Guard team or individual at all times. There is strong support within the Department of Defense and Congress to consider amending the *Posse Comitatus Act* (Title 10). There is concern about the limitations the provisions in the law provide regarding support to military intervention, in the anti-drug efforts. It some respects the National Guard is being singled out as the Department of Defense's "internal" military contributor to the drug effort based on restrictions of *Posse Comitatus*. It appears that the National Guard has stretched the intent of the Act by permitting its members to be in a Federal pay status, under the caveat of State Active Duty (Title 32) and/or Active Guard or Reserve (AGR) , while performing some of the long range patrol surveillance missions, inspections of vehicles coming across international borders, and possible detainment of these vehicles.

The intent of the AGR program, through passage of the Department of Defense Authorization Act of 1980, authorized National Guard and U.S. Army Reserve full-time Active Duty personnel for the purpose of organizing, administering,

recruiting, instructing or training the reserve components.<sup>17</sup> It did not imply they were to be used to support law enforcement, yet many AGR personnel are involved in supporting anti-drug law enforcement efforts.

Congress considered a provision that would grant arrest and seizure authority to military personnel involved with law enforcement, but felt it was inconsistent with our national traditions to use armed forces for these purposes. The provisions of *Posse Comitatus* are being reviewed by the Supreme Court and should clarify the military's role in drug interdiction and eradication efforts.

#### ENDNOTES

11. Stephan M. Duncan, Assistant Secretary of Defense, Memorandum: Manpower Support For Drug Enforcement Operations, Washington 3 July 1989.

12. U.S., National Guard Bureau, Report On The General Officer Drug Enforcement Operations In Process Review, (Washington: GPO, 1989) 268p.

13. Ibid., 201.

14. Ibid., 202.

15. Temple, 518.

16. Aleksandra M. Rohde, Pushing the Limits of Posse Comitatus, National Guard Magazine, Vol. 43, No.8, August 1989, p. 31.

17. Ibid., 34



## CHAPTER V

### SURVEY

There has been a great deal of debate and disagreement on how to organize and resource the nation's efforts to combat the proliferation of illegal drugs. Within the Department of Defense there has been a great deal of discussion regarding the role the military services should have in support of the nations efforts to deal with this crisis. As a result there was a need to determine if the National Guard should be involved in supporting law enforcement in the drug interdiction and eradication effort and whether the National Guard was being pushed into this support role because of political reasons, the availability of personnel and equipment, or other reasons. It was important to obtain information that would provide unbiased findings.

The National Guard's role in counternarcotics operations perspective of senior officers regarding existing laws and guidance obtained from the National Guard Bureau provide important insights. A survey was selected as the means to collect information. The first consideration was to define the population. In this particular situation, it was important to use individuals who have had experience with support to law enforcement agencies for drug interdiction and eradication. Based on the criteria noted, senior National Guard Officers were selected as the group to participate in

the survey.

In December 1989 a survey (Appendix E), was distributed to the Adjutants General of each State and Territories to solicit their opinions on the National Guard's role in the anti-drug effort. All surveys concluded with a request for additional comments (Appendix F). The survey was mailed to the 54 Adjutants General on 15 December 1989 and the results tabulated on 30 January 1990 (Appendix F, enclosure 1). There were 50 Adjutants General that responded.

The Adjutants General views on the State's role, to include the problems encountered in this new mission requirement - support to law enforcement agencies - should provide insights on the National Guard's ability to perform the functions of drug interdiction and eradication without detriment to its wartime training missions.

The responses and comments will provide a better understanding of several topics which will be analyzed: the legal aspects of counternarcotics operations; stated policies; funding; and personnel constraints. The analysis will provide a greater understanding of the employment of the National Guard and its assets, whether it is a viable mission, and whether training for its wartime mission would be affected adversely. Many of the Adjutants General have first hand knowledge concerning the effectiveness of the drug interdiction/eradication mission, particularly in their State operations. Because this role is relatively new and cannot be assessed in term of long standing commitments, the

statistical data gathered should provide a means to evaluate the cost effectiveness of putting a supplemental force in place to support law enforcement agencies for an extended period of time.

Identification of the requirement to use the National Guard in support of law enforcement efforts came from the Secretary of Defense. However, National Guard concerns regarding this requirement were best described on May 19, 1983, by LTG Emmett Walker Jr., the former Chief, National Guard Bureau, who stated during his address to the subcommittee on government operations, "it is the policy of the National Guard Bureau to encourage support to civil law enforcement officials, except where such support distracts from the National Guard's primary training from its wartime mission."

### ANALYSIS OF SURVEY

Based on the survey results received, it is apparent that some of the Adjutants General do not have full knowledge of the National Guard Bureau's<sup>18</sup> stated policy about adhering to the Posse Comitatus provisions of the law nor are they aware of the amendments in Section 370-380 of Title 10.

This apparent lack of knowledge is an important issue because education regarding drug interdiction policies, laws, and the ramifications for failure to comply should start at the highest level of authority in the State military organization - The Adjutants General - and extend to the lowest level, the individual Guardsman working with the law enforcement agency. All National Guard members should be cognizant of their responsibilities, and learn command relationships. They should know the duties that they can or cannot accomplish while providing assistance to law enforcement agencies.

The shared concern by many of the Adjutants General, is the over zealousness of some of our young National Guard leaders who have a tendency to be aggressive and often lose perspective of their responsibilities. This can lead to undetermined problems with the provisions of the law.

There are questions concerning the legal status of counternarcotics operations service. As a result it may take a Federal court to render an opinion regarding the status of National Guard personnel performing

counternarcotics operations. For example, there are still important unanswered questions concerning whether counternarcotics operations support by National Guard members is under the command of the Governor or under Title 10, based on the mission and federal pay provided. The law classifies the National Guard to be under Title 10 only when it is mobilized or deploys OCONUS for training. Title 32 covers the National Guard during its normal state mission configuration (under the control of the Governor) and training within the continental United States.

There are some Adjutants General for example, that feel the National Guard is extremely capable of performing drug interdiction duties, and they would volunteer their National Guard to train Bolivian military and Drug Enforcement Agency (DEA) personnel in Bolivia. This mission is now being accomplished by active duty U.S. Special Forces troops.<sup>19</sup>

The involvement of the National Guard into the role of drug interdiction and eradication was seen as a way of increasing the limited manpower and equipment available to law enforcement agencies, both federal and local. The implementation of Public Law 100-456, along with adjudication by the Supreme Court in Posse Comitatus of section 370 through 380, of Title 10, served its purpose by allowing expanded military involvement in support to law enforcement. It is under these provisions that the National Guard, although not required to adhere to the provisions of Posse Comitatus, has been somewhat negligent in performing some of

its duties. There is some evidence that members of the National Guard, on several occasions, have conducted surveillance (with loaded weapons), conducted searches of trucks and vehicles, and detained vehicles.<sup>20</sup> These are isolated incidents, but could create legal precedence. Control measures must be adopted to prevent even isolated abuses of the law. It may be time to reconsider the extent of the existing laws. Under the present laws it is important to ensure that the National Guard strictly complies with the provisions of Posse Comitatus.

The establishment of policy for commitment of National Guard support is the responsibility of the National Guard Bureau in conjunction with the state Adjutants General and their governors. In the case of support to civil law enforcement in counternarcotics operations, the governors and Adjutants Generals generally feel this is a viable mission for the National Guard. In any type operation the National Guard has been involved, the question of command and control has historically been an easy area to resolve. The senior commander takes full responsibility for the mission and all actions of his soldiers.

However, in the drug interdiction role the National Guard has strictly a support requirement and cannot be used to command any aspect of the operations. Additionally, they cannot be involved in any domestic intelligence gathering, search, seizure, or arrests. The adjutants General feel that they can ensure that their soldiers will abide with

established plans.

In 1989, the National Guard received \$40 million to support law enforcement requirements, with a minimal amounts for equipment purchases. A concern shared by the Adjutants General was a lack of specialized equipment that would provide added mission capability, if they were to continue supporting law enforcement agencies. The use of helicopters with *MMS* (Mast Mounted Sight) and *FLIR* (Forward Looking Infrared Radar) would greatly increase the surveillance capability of National Guard helicopters. Dollars were not available for purchase of these items.

The new budget (FY90), includes \$70 million dollars for personnel support and \$40 million dollars for equipment procurement. There are advantages of obtaining this equipment for National Guard helicopters versus borrowing Active Component equipment or assigning Active Component personnel and equipment into the surveillance responsibility. The Adjutants General feel they are capable of performing these surveillance missions, but when this limited amount of money is distributed among the 54 participating States and Territories minimal amounts of equipment can be purchased. The authorized equipment obtained through the budgeted money for law enforcement support increases the training and readiness of the military units assigned the equipment as well as supporting the drug interdiction and eradication efforts.

# ENDNOTES

18. National Guard Magazine, Vol. 43, No. 8, p. 41.

19. Ibid.

20. Ibid., p.42.



Approximately 4,600 or 1 percent of the members of National Guard are committed to performing the drug interdiction and eradication requirements. All of these individuals are volunteers and are required to hold an infantry, military police, aviation pilot, or intelligence related Military Occupational Specialty (MOS). The Adjutants General, after participation in several of their state support to law enforcement operations, feel that the number of MOS's could be increases. While a minimal amount of additional training may be required, providing assistance in container, tractor-trailer, and rail car inspections could easily be handled by any MOS. This would expand the National Guard's volunteer workforce and contribute greater support to law enforcement by providing additional personnel for container and truck-trailer inspections. The Adjutants General are supporting the work that military personnel contribution to drug curtailment, but there is concern that their State military forces not get overcommitted. It is important that the National Guard not lose sight of the primary mission - preparation and training for wartime missions.

## CHAPTER VI

### CONCLUSION

The Adjutants General acknowledge that the use of the National Guard in support of drug interdiction is a viable mission within the State borders. However, escalation of the National Guard's mission to include the use of National Guard personnel in support of drug interdiction and eradication in Central and South America is not feasible. Under the current laws the National Guard would have to be mobilized (Presidential Call-up) to participate in military operations outside the United States. While there are many members of the National Guard who would probably volunteer to provide continued support in operations outside of the United States, it would require changing their status from Title 32 to Title 10. Supporting counternarcotics operations is an important mission for the National Guard and the National Guard should continue to provide support within the internal borders of the United States.

The Anti-Drug Act of 1986 and subsequent legislation have contributed the funding necessary to allow an increase in awareness and action to proceed with drug education, treatment, and interdiction. Escalating cost for administering these programs and prosecuting offenders is a major concern for the citizens of our country. Statistics reflect a reduction in drug use in cocaine, marijuana, and heroin, but evidence of trafficking continues to grow

reflected by recent confiscations of large quantities of illegal drugs in Los Angeles and New York.

The overwhelming proof of illegal drug use is in the prison system, because convictions for serious crimes is on the rise. There are many who feel we must have a "war" on drugs and use all means possible to rid this country of this problem. Unfortunately, even though statistics show a reduction in usage, the demand may never go away.

### RECOMMENDATIONS

The Department of Defense should continue to employ the military, especially the National Guard, in supporting law enforcement agencies with the drug interdiction and eradication effort. The National Guard has had a tremendous impact in the drug interdiction and eradication effort. The professionalism the National Guard has demonstrated in carrying out their responsibilities, provides law enforcement agencies a needed asset.

Continued use of the National Guard, in border observations, clandestine airstrip observations, commercial port of entry inspections, sea port inspections, radar surveillance, and sea vessel surveillance, may have to be accomplished with a mobilized force instead of volunteers. This will be an important consideration if support requirements increase.

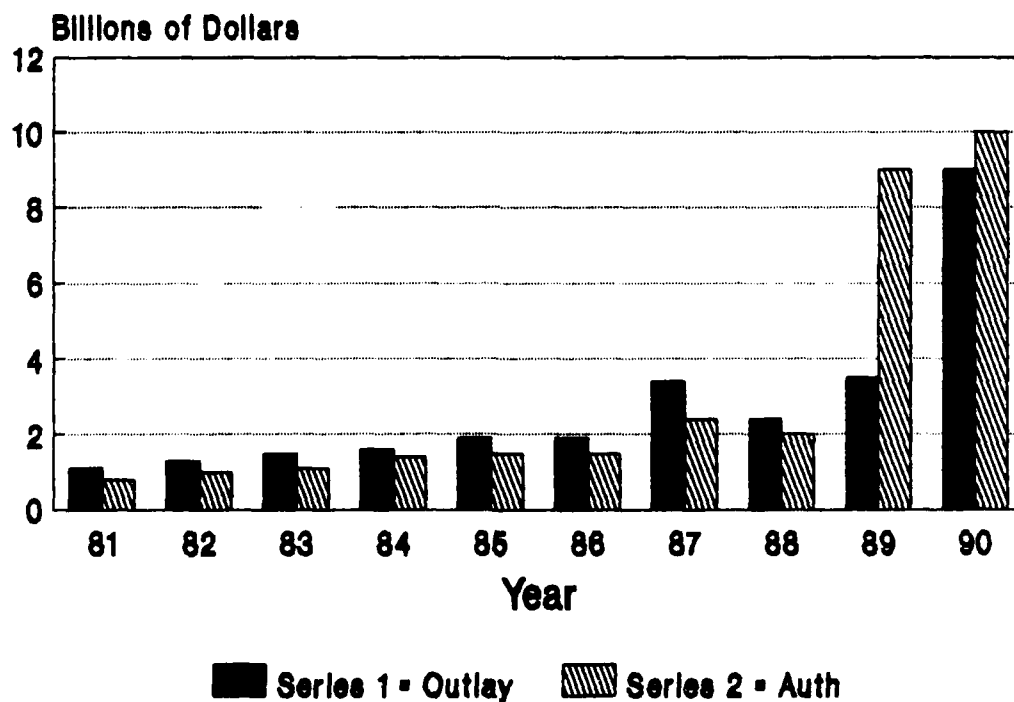
The success of law enforcement agencies, using the National Guard, has been reflected in the number of arrests,

seizures of narcotics, vehicles, weapons, and cash. A prime example is in California, where the National Guard located 970 pounds of cocaine in a three week period. Law enforcement agencies operating without National Guard support found less than 1 pound during the same time period. The National Guard, comprised largely of citizen soldiers, is a proud force, willing to provide assistance when and where required.

The Active Components should be planning, training, and preparing for deployments into the Central and South America regions if the growing, processing and exporting continues.

APPENDIX A

## Drug Abuse Prevention & Control Budget Authority, FY81-89



Source: OMB

## DRUG SUPPORT PLANS OPERATIONS

- o FY-90 PLANS SUBMITTED                      53 STATES  
(NH, None submitted)
- o DOD ANTI-DRUG FUNDING:                      \$450 MILLION  
(ARNG/ANG OPERATIONS:                      \$70 MILLION)

### DESCRIPTION OF OPERATIONS

- o GROUND SURVEILLANCE
- o AERIAL RECONNAISSANCE
- o AERIAL SURVEILLANCE
- o AERIAL TRANSPORT OF LAW OFFICERS
- o AERIAL TRANSPORT OF SEIZED PROPERTY
- o CARGO INSPECTIONS/BORDER ENTRY POINT
- o INSPECTION OF AIR/WATERCRAFT/VEHICLES
- o COLLECT AND REMOVE CONTRABAND
- o ADMIN/INTEL/ADP AND LOG SUPPORT
- o FILM PROCESSING FOR PHOTO RECON

SOURCE: NGB-MS

## DRUG ENFORCEMENT SUPPORT FY 89 YEAR END STATISTICS

|                                  |         |
|----------------------------------|---------|
| STATES INVOLVED IN MISSIONS      | 53      |
| TOTAL MISSIONS                   | 1,811   |
| REQUESTS FOR LOAN/LEASE OF EQUIP | 15      |
| PERSONNEL INVOLVED               | 4,871   |
| MANDAYS UTILIZED                 | 107,348 |
| TOTAL FLYING HOURS               | 1,736   |

SOURCE: NGB-MS

## RESULTS OF DRUG SUPPORT OPERATION AS OF NOVEMBER 1989

|                                 |             |
|---------------------------------|-------------|
| CASH CONFISCATED                | \$1,735,745 |
| MARIJUANA PLANTS                | 4,076,662   |
| MARIJUANA PROCESSED POUNDS      | 46,917      |
| COCAINE POUNDS                  | 19,527      |
| HEROIN POUNDS                   | 39.5        |
| VEHICLES                        | 271         |
| WEAPONS                         | 111         |
| AMMUNITION ROUNDS               | 365,275     |
| ARRESTS (DETAINMENT ASSISTANCE) | 915         |

SOURCE: NGB-MS



## APPENDIX E

### LETTER QUESTIONNAIRE

Dear Respondent,

Thank you for your cooperation with this survey questionnaire. I am a National Guard Officer attending the Army War College. The role of the National Guard providing assistance to law enforcement in drug interdiction and eradication has had mixed results. There are individuals who feel this is a proper and fitting mission for the National Guard, and others who think the military should not be involved. Your assistance in responding to the questionnaire will be the basis for an analytical appraisal in preparation of my Military Studies Program and Master's Program at Shippensburg University.

As a leader in the National Guard and the United States military, your opinions in this area have great merit. The role of the National Guard, in support to law enforcement for drug interdiction, is continuing to grow as each State and Territory provides resources. With 53 approved State/Territory plans, it is evident that there is a commitment from each State/Territory to support the President's National Strategy on drug abuse.

I greatly appreciate your assistance and comments toward this effort. Your response to the survey and any additional comments will be held in strict confidence, and will only be used in this research effort.

LTC Manuel F. Silva  
Army War College, Box 251  
Carlisle, PA. 17013

## SURVEY QUESTIONNAIRE

1. Is your State/Territory currently employing the National Guard in Drug Interdiction?
  - a. Yes
  - b. No
2. In what role do you feel the National Guard is best suited?
  - a. Provide trained personnel
  - b. Provide equipment
  - c. both
  - d. Not participating in support to law enforcement
3. The Department of Defense has requested the military to become more involved in drug interdiction and eradication. Do you feel the National Guard is being singled out as the military contributor?
  - a. Agree
  - b. Disagree
4. Posse Comitatus Act and DOD regulations prohibit the military from enforcing U.S. civil laws. Do you feel that National Guard personnel under Title 32, are exempt from these requirements?
  - a. Agree
  - b. Disagree
  - c. Not Sure
5. Sections 371, 372, and 373 of Title 10, United States Code, provides for military cooperation with Federal, State, and local law enforcement agencies sharing information, using military equipment and facilities, and training law enforcement personnel. Do you feel these amendments to the Posse Comitatus Act were enacted to protect the military?
  - a. Agree
  - b. Disagree
  - c. Not Sure

6. Under DOD's regulations, the military services are precluded from (1) interdicting a vehicle, vessel, or aircraft, (2) search and seizure, (3) arresting, stopping and frisking, or similar activity, (4) providing personnel for surveillance or pursuit of individuals or as informants, undercover agents, investigators or interrogators. Yet, many briefings conducted by NGB reflect that the National Guard is involved to a degree in all of the above. Do you think the National Guard is abusing the 1982 Defense Authorization Act?
  - a. Agree
  - b. Disagree
7. Many of the States and Territories feel the drug interdiction role for the National Guard is a justified requirement that provides the necessary support to eradicate drug trafficking and distribution. Do you share these sentiments?
  - a. Agree
  - b. Disagree
8. There are those in the Active Component who have stated the use of the military will diminish the combat readiness and capability to respond to the military's mission. Do you share these same thoughts?
  - a. Agree
  - b. Disagree
9. The National Guard has stated that participation in drug interdiction and eradication has increased the readiness and capability of its units and personnel. Do you share these same thoughts?
  - a. Agree
  - b. Disagree
10. There are many who feel the National Guard is not sufficiently prepared or trained in the specifics of drug interdiction. Do you share this feeling?
  - a. Agree
  - b. Disagree

11. With the added responsibility being placed on the National Guard in this role, many soldiers that are employed outside of the National Guard, but participate in drug interdiction, will eventually have employer problems. Is your State experiencing this dilemma?
  - a. Agree
  - b. Disagree
12. The National Guard should have a total volunteer force to provide support in drug interdiction?
  - a. Agree
  - b. Disagree
13. Currently only certain MOS' are authorized to participate in drug interdiction support to law enforcement agencies. Do you feel all Guardspersons are qualified or could be trained to accomplish the requirements?
  - a. Agree
  - b. Disagree
14. The National Guard should mobilize units for short durations to supplement the DOD and law enforcement requirements?
  - a. Agree
  - B. Disagree
15. Is the National Guard's equipment sufficient to support law enforcement's requirements?
  - a. Agree
  - b. Disagree
16. The National Guard has reaped several benefits from their participation in drug interdiction. One of the more crucial items is equipment. Was your State a benefactor of equipment obtained by supporting law enforcement?
  - a. Agree
  - b. Disagree
  - c. In the process of receiving equipment.

17. The National Guard requires "state of the art" equipment in order for it to be a viable asset in drug interdiction?
- a. Agree
  - b. Disagree
  - c. Disagree, but advance technology items would assist.
18. There are many who feel the National Guard's image has greatly improved by willingly supporting the President's National Strategy in Drug Abuse? Do you agree?
- a. Agree
  - b. Disagree
19. Do you feel the Active Components could do a better job of drug interdiction than the National Guard?
- a. Agree
  - b. Disagree
20. Why do you think the National Guard accepted the mission to support law enforcement?
- a. Requested by the State Governor
  - b. Requested by Secretary of Defense
  - c. National Guard Bureau volunteered to support the law enforcement agencies requirements
  - d. Required under 1982 Defense Authorization Act
  - e. It was in the best interest of the country
  - f. \_\_\_\_\_
21. Do you feel the American people fully support the military's role in the drug interdiction effort?
- a. Agree
  - b. Disagree

22. Can the "war" on drugs be effective without the use of military personnel and equipment?
- a. Agree
  - b. Disagree
23. Should military personnel, including National Guard, be authorized to conduct drug interdiction activities on foreign soil?
- a. Agree
  - b. Disagree
24. Should the military be excluded from participating in its current support role to law enforcement?
- a. Agree
  - b. Disagree
25. Should efforts be made by the Secretary of Defense to commit all elements of the military to eradicate drug growing, producing and processing, trafficking, distribution, and use?
- a. Agree
  - b. Disagree

\* Please submit any comments or thoughts you may have in the use of the National Guard or the military's role in supporting the drug interdiction and eradication efforts.

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## APPENDIX F

### QUESTIONNAIRE ANALYSIS

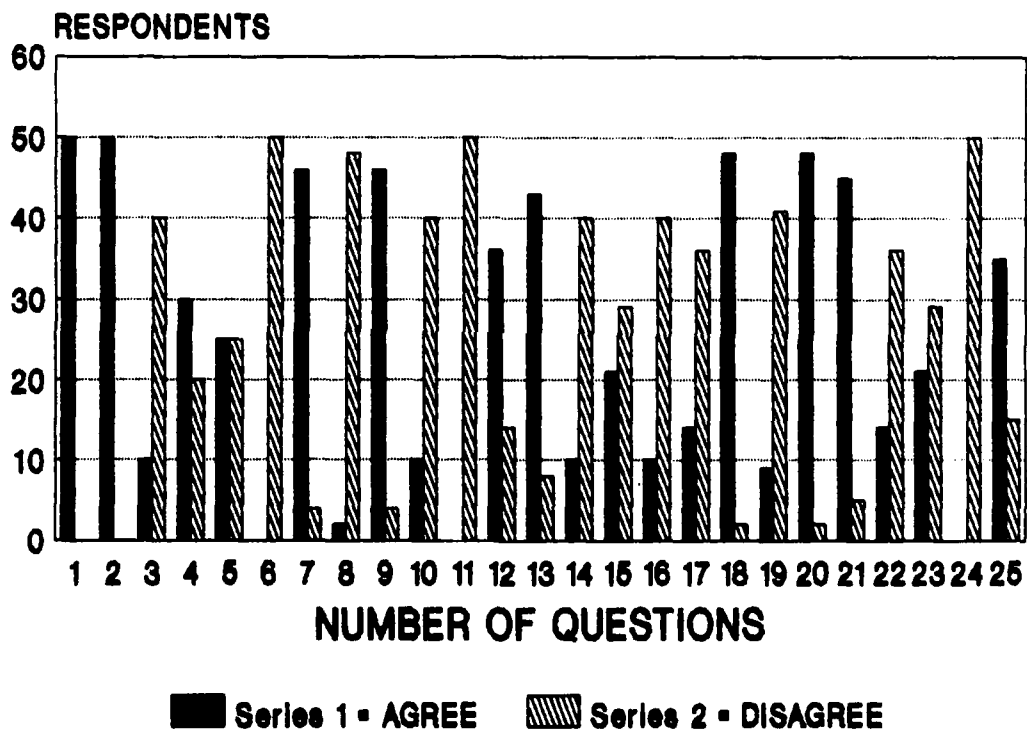
1. 50 Yes 0 No: Respondents all employ the National Guard in drug interdiction and eradication.
2. 50 Yes 0 No: Respondents answered trained personnel and provide equipment.
3. 10 Yes 40 No: Respondents answered that they did not feel the National Guard was being singled out as the military contributor. This is contrary to my interpretation, since the National Guard has flexibility in the provisions of Posse Comitatus and can provide immediate assistance to law enforcement agencies, both State and Federal.
4. 30 Yes 20 No: Respondents answered that they are exempt from the provisions of Posse Comitatus. The support on this question was almost even. Even though the act provides some relief, through amendments, the policy of the National Guard Bureau implies they will not conduct arrests, surveillance, or pursuit.
5. 25 Yes 25 No: Respondents answered in most cases they were not sure. The leadership should be more familiar with the Posse Comitatus laws and amendments. The amendments were revised to ensure the military could assist law enforcement agencies in certain situations; in this case drug interdiction and eradication.
6. 00 Yes 50 No: Respondents answered overwhelmingly that the National Guard was not abusing the 1982 Defense Authorization Act.
7. 46 Yes 4 No: Respondents felt that they were doing a justifiable mission in supporting law enforcement in drug interdiction.
8. 02 Yes 48 No: Respondents answered overwhelmingly that the support to law enforcement is not degrading the combat readiness and capabilities of the National Guard, in fact has increased the effectiveness, especially in surveillance, intelligence gathering and mission purpose.

9. 46 Yes 4 No: Respondents answered these missions have increased readiness.
10. 10 Yes 40 No: Respondents answered they felt the National Guard was sufficiently prepared and trained to support law enforcement.
11. 00 Yes 50 No: Respondents answered they have not encountered any employer support problems. This action is probably due to a volunteer force accomplishing the initial support to law enforcement.
12. 36 Yes 14 No: Respondents answered that the force should be volunteer. This would be beneficial until large or more frequent use is required.
13. 43 Yes 7 No: Respondents answered by majority that the National Guard was trained or could be easily trained to support drug mission requirements.
14. 10 Yes 40 No: Respondents answered that units should not be mobilized. The volunteer force currently could accomplish the tasking.
15. 21 Yes 29 No: Respondents answered by majority that equipment on hand was not sufficient to accomplish all the requirements of the mission.
16. 10 Yes 40 No: The majority of respondents indicated they were not receiving some new equipment to support law enforcement requirements. However, new equipment is being received or in the process of being received if the State has formally requested it.
17. 14 Yes 36 No: Respondents answered some electronic type equipment would be beneficial and self supporting to those elements involved in surveillance.
18. 48 Yes 2 No: Respondents answered that the National Guard's involvement in the President's National Strategy on Drug Abuse added to the positive image already given to the National Guard. This suggests a willingness to support and "can do" attitude.
19. 09 Yes 41 No: Respondents answered that the National Guard is responding to the call and is currently more capable than the Active Component. This supports my position with the exception of the sea forces.



20. 48 Yes 2 No: This question was a multiple choice with a interest toward the better answer. All answers were correct with the exception of two fill-ins that failed to support the reasons.
21. 45 Yes 5 No: Respondents answered by overwhelming majority that the American people support the National Guard's participation.
22. 14 Yes 36 No: Respondents answered by majority that military intervention increases the effectiveness of drug interdiction and eradication programs. Several of the Adjutants General do not totally accept the rational that use of military intervention increases the effectiveness of the drug programs.
23. 21 Yes 29 No: Respondents answered by majority that drug interdiction missions should be contained to the United States. This does not support my position. I feel if we are to make an impact in drug trafficking, we must use methods, with concurrence of the host country, to destroy all processing plants.
24. 00 Yes 50 No: Respondents answered overwhelmingly that the military should not be excluded from the drug interdiction role.
25. 35 Yes 15 No: Respondents answered overwhelmingly that all elements of the military should be used to eradicate drug growing, producing and processing, trafficking distribution, and use. There are many who feel this is the number one domestic issue confronting the American public.

## DRUG SUPPORT NATIONAL GUARD



ADJUTANTS GENERAL RESPONSE

## BIBLIOGRAPHY

1. Duncan, Stephan M. "Memorandum: Manpower Support For Drug Enforcement Operations." Secretary of Defense, 3 July 1989, pp. 1-2
2. Hogan, Harry L. "CSR Report to Congress." Federal Drug Control: President's Budget Request For Fiscal Year 1988, 1 June 1987, pp. 2-19.
3. Rohde, Aleksandra M. Pushing the Limits of Posse Comitatus, National Guard Magazine, Vol. 43, No.8, August 1989, p. 51.
4. Temple, Herbert R. Jr. "The Nation's War on Drugs." Vital Speeches of the Day, 15 June 1989, pp. 516-519.
5. U.S., Congressional Code and Administrative News. Federal Statutes. [Washington: GPO, 1986].
6. U.S., Congressional Quarterly Almanac. Report on P.L. 99-570. [Washington: GPO, 1987]
7. U.S., General Accounting Office. Report to Congressional Requestors. Drug Control: Issues Surrounding Increased Use of the Military in Drug Interdiction, April 1988, pp. 20-22.
8. U.S., General Accounting Office. Federal Drug Interdiction Efforts Need Strong Central Oversight, General Of The United States] (Washington: GPO, 1983)
9. U.S., National Guard Bureau. Report On The General Officer Drug Enforcement Operations In Process Review, 21 July 1989, pp. 1-5.
10. U. S., White House. National Drug Control Strategy. [Washington: GPO, 1989]. p. 153.